IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5346 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAJIDBHAI @ SAJID DUBLI ADBULBHAI VORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5346 of 2002

MR HN JOSHI ON BEHALF OF

M/S THAKKAR ASSOC. for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/10/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 24/4/2002 passed by the District Magistrate, Kheda at Nadiad and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. The learned advocate for the petitioner detenu has argued that the detaining authority has passed the impugned order of detention relying upon three offences registered against the petitioner detenu before the Chakalasi Police Station under Indian Penal Code. He has further argued that the detenu has submitted a representation to the detaining authority on 31/5/2002 through advocate and thereby demanded legible copies of certain documents which were not legible. The detaining authority has received the said representation on 3/6/2002. Thereafter, the detaining authority forwarded the same to the State Government and the State Government has received the said representation on the same day. The authority asked the advocate of the petitioner detenu to remain in contact with the State Government and till today the State Government has not given any reply or has not considered the said representation of the petitioner, hence the said action of the State Government according to the learned advocate for the petitioner is unconstitutional and hence the detention order cannot be sustained in the eyes of law. He has further submitted that it was the duty of the concerned authority to provide copies of the legible documents as demanded by the petitioner detenu. However, the authority has failed to discharge his duty. Even no affidavit has been filed by the State authority. It has

been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since the concerned authority has neither decided the representation of the petitioner nor supplied the legible copies of the documents demanded by the petitioner detenu, nor affidavit has been filed either by the detaining authority or by the State authority explaining the inaction of the concerned authority and thereby the petitioner detenu is prevented from making an effective representation and hence the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 24/4/2002 passed against the detenu is hereby quashed. The detenu namely Sajidbhai @ Sajid Dubli Abdulbhai Vora is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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